

DOCUMENT #5544
ADOPTED 12/23/92

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SALE AND CONSTRUCTION AGREEMENT
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Letter

1. Definitions
2. City Note
3. City Mortgage

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NEW BOSTON GARDEN
SALE AND CONSTRUCTION AGREEMENT

THIS SALE AND CONSTRUCTION AGREEMENT (this "Agreement") is entered into as of December 22, 1992 by and between the CITY OF BOSTON acting through its Public Facilities Commission (the "City"), the BOSTON REDEVELOPMENT AUTHORITY, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts (the "Authority"), GARDEN CORPORATION, a Massachusetts corporation (the "Owner") and NEW BOSTON GARDEN CORPORATION, a Delaware corporation (the "Developer").

WHEREAS

The Developer is the owner of a certain parcel of land (the "Existing Garden Site") on Causeway Street, Boston, shown as "N/F New Boston Garden Corporation" consisting of 2.035 acres, all as shown on that certain plan entitled "Subdivision Plan of Land in Boston, Mass. Prepared for New Boston Garden Corporation", dated September 15, 1992, revised October 20, 1992, by Vanasse Hangen Brustlin, Inc. (the "Subdivision Plan"; a copy of the Subdivision Plan is recorded in the Suffolk County Registry of Deeds at Book 17881, Page End), together with the improvements thereon (the "Existing Garden");

The City is the owner of air rights (the "Original Air Rights") commencing at elevation 46.9' above mean sea level above parcels A-1, A-2, A-3 and A-4 as shown on the Subdivision Plan, pursuant to a deed from the Massachusetts Bay Transportation Authority (the "MBTA") dated May 31, 1988 and recorded in the Suffolk County Registry of Deeds at Book 15312, Page 57;

The Authority is the owner of a certain right-of-way known as "Lowell Way" shown as parcel D-1 on the Subdivision Plan ("Lowell Way") in which the Owner wishes to obtain an easement (the "Lowell Way Easement");

The Owner, pursuant to a Master Cooperation Agreement (the "MBTA Master Cooperation Agreement") and certain additional agreements (collectively, the "MBTA Agreements") with the MBTA, has the right to acquire air rights commencing at grade over parcels B-1, B-2, C-1, C-2, C-3, C-4, C-5, C-6, C-7 and C-8, as well as additional air rights commencing at grade over parcels A-1, A-2, A-3 and A-4, all as shown on the Subdivision Plan (collectively, the "Additional MBTA Property") (the "Additional MBTA Property" and the "Original Air Rights" being hereinafter collectively referred to as the "New Building Site");

The City, pursuant to the process (the "30B Process") required of it by Massachusetts G.L. c.30B §§1 et seq, has designated the Developer as the approved developer of the Original Air Rights and has authorized the conveyance of the Original Air Rights to the Owner;

The Owner intends to lease (the "Master Lease"; such Master Lease to be substantially in the form appended to the 6A Contract, as hereinafter defined, as Appendix A) the New Building Site to the Developer for the purpose of developing 1) above parcels A-1, A-2, B-1, B-2, C-4, C-5, C-6, C-7 and C-8, all as shown on the Subdivision Plan (the "New Garden Site"), a new mass transportation and sports and entertainment facility (the "New

Garden"), and 2) above parcels A-3, A-4, C-1, C-2 and C-3, all as shown on the Subdivision Plan (the "Tower A Site"), a commercial office, hotel, retail or such other mixed use building as may be permitted under applicable zoning laws ("Tower A");

Upon application (the "121A Application"), the Owner and the Developer have been designated as a 121A entity by a Report and Decision (the "Report and Decision") of the Authority pursuant to Massachusetts G.L.c. 121A §1 et seq as to the New Building Site and, upon completion of the New Garden, as to the Existing Garden Site, and the City has entered into a contract with the Owner and the Developer under Massachusetts G.L.c. 121 §6A (the "6A Contract") pursuant to said designation (the Application, the Report and Decision and the resulting 6A Contract being hereinafter collectively referred to as the "121A Agreement");

The Developer, the City and the Authority entered into that certain Memorandum of Agreement, dated January 26, 1989, as amended by an Amendment No. 1, dated March 15, 1990 (as so amended, the "MOA") concerning the terms and conditions of the proposed transfer of the Original Air Rights to the Developer; and

The City, the Authority, the Developer and the Owner now wish to enter into a definitive agreement for the purchase and sale of the Original Air Rights and the grant of the Lowell Way Easement (collectively, the "City Property").

Now, Therefore, for good consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Purpose and Construction.

§1.1. Purpose. The purpose of this Agreement is, as described in the foregoing recitals, to evidence the agreement of the City and the Authority to sell and convey the City Property to the Owner, and to evidence the agreement of the Owner to purchase and acquire the City Property, and of the Developer to construct the New Garden on the New Garden Site, all subject to the provisions of this Agreement.

§1.2. Definitions. Capitalized terms used herein shall have the meanings in the Table of Definitions appended hereto as Exhibit A.

§1.3. Memorandum of Agreement. This Agreement supersedes in its entirety the MOA and any other prior agreements, oral or written, concerning the conveyance of the City Property. This Agreement sets forth the entire understanding of the parties with respect thereto, and neither the MOA nor any other such agreement, except agreements executed in connection herewith or in connection with the 121A Agreement, shall have any further force or effect.

2. Conveyance and Title.

§2.1. Sale of City Property. Upon the terms and subject to the conditions of this Agreement, at Closing, the City agrees to sell and convey to the Owner, and the Owner agrees to purchase and acquire from the City, good, clear, record and marketable title to the Original Air Rights by a quitclaim deed (the "Original Air Rights Deed"), subject to no liens, easements, restrictions, encumbrances or other defects in title, whether of record or not, other than such exceptions as are expressly consented to in writing by the Owner prior to Closing (the "Permitted City Exceptions"). The acceptance of the Original Air Rights Deed by the Owner shall constitute acknowledgement by the Owner that the City has satisfied the conditions of this Section 2.1 and be deemed to be the Owner's express consent to such exceptions.

§2.2. Transfer of Lowell Way Easement. Upon the terms and subject to the conditions of this Agreement, at Closing, the Authority agrees to grant to the Owner, and the Owner agrees to purchase and acquire from the Authority, good, clear, record and marketable title to the Lowell Way Easement by a quitclaim deed of easement (the "Lowell Way Easement Deed") subject to no liens, easements, restrictions or encumbrances, whether of record or not, other than such exceptions as are expressly consented to in writing by the Owner prior to Closing (the "Permitted Authority Exceptions"). The acceptance of the Lowell Way Easement Deed by the Owner shall constitute acknowledgement by the

Owner that the Authority has satisfied the conditions of this Section 2.2 and be deemed to be the Owner's express consent to such exceptions.

3. Purchase Price.

§3.1. Purchase Price. The aggregate purchase price (the "Purchase Price") for the City Property shall be Twenty Million One Hundred Fifty Thousand Dollars (\$20,150,000), payable as provided in Section 3.2 below.

§3.2. Terms of Purchase Price Payment. The Purchase Price shall be due and payable in accordance with the terms of that certain promissory note (the "City Note") to be executed by the Owner and Developer at Closing in the form attached hereto as Exhibit B.

§3.3. Security for the City Note. As security for the City Note, the Owner and the Developer shall execute and deliver to the City at Closing a first mortgage (the "City Mortgage") covering the Tower A Site and the Existing Garden Site in the form attached hereto as Exhibit C. This Agreement shall constitute a contractual obligation and shall not constitute the grant of a mortgage or security interest, the City's sole security being granted in the City Mortgage.

4. Conditions to Closing.

§4.1. Conditions Precedent to Obligations of the Owner and the Developer. Unless waived, in whole or in part, in writing by the Owner and the Developer, the obligations of the Owner and the Developer to consummate the

transactions contemplated by this Agreement shall be subject to the fulfillment, prior to or at the Closing, of the following conditions:

(a) Each of the representations and warranties contained in Section 5.3 hereof shall be true as of the date of Closing, all of the conditions concerning title to the City Property contained in Sections 2.1 and 2.2 shall have been fully satisfied and the City and Authority shall have complied with all of the terms and conditions of this Agreement.

(b) The City and the Authority shall have delivered to the Owner and the Developer a Certificate certifying that the conditions set forth in Section 4.1(a) have been satisfied.

(c) The City and the Authority shall have delivered to the Owner and the Developer such evidence of the authority of the City and of the Authority to enter into the transactions contemplated hereby as the Owner or the Developer may require.

(d) The City and the Authority shall have delivered such quality of title to the City Property as is required pursuant to Sections 2.1 and 2.2 hereof, and such title is insurable on the normal ALTA form, at regular rates, by a substantial, nationally recognized title insurance company selected by the Owner.

(e) The MBTA and any other State and Federal agencies or authorities having jurisdiction over the

construction and operation of the New Garden shall have executed and delivered all agreements deemed by the Owner and Developer as necessary or appropriate for the construction and operation of the New Garden, including, without limitation, the MBTA Agreements, and such agreements shall be in full force and effect.

(f) The MBTA shall have conveyed the Additional MBTA Property to the Owner pursuant to the terms of the MBTA Agreements.

(g) The Owner and the Developer shall have obtained all federal, state and local permits and approvals necessary for the construction and operation of the New Garden on terms which the Owner and the Developer, in their sole discretion, determine are acceptable.

(h) The closing of the construction and term loan financing (the "Initial Financing") for the construction of the New Garden upon terms not less favorable, in the Developer's sole discretion, than those specified in the Commitment Letter, dated as of May 5, 1992, addressed to the Developer and Delaware North Companies, Inc. by Shawmut Bank, N.A., Fleet Bank of Massachusetts, N.A. and The First National Bank of Boston (collectively, the "Construction Lenders"), as amended from time to time (the "Commitment Letter"), shall have occurred.

(i) The City and the Owner shall have entered into a 6A Contract pursuant to the terms and conditions of the 121A Application and Report and Decision of the Authority, and the 121A Agreement shall be in full force and effect.

(j) The transfer of the City Property and the recording of the Original Air Rights Deed and the Lowell Way Easement Deed shall not require the payment by the Owner or the Developer of any transfer or stamp taxes.

§4.2. Conditions Precedent to the Obligations of the City and the Authority. Unless waived, in whole or in part, in writing by the City and the Authority, the obligations of the City and the Authority to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, prior to or at the Closing, of the following conditions:

(a) Each of the representations and warranties contained in Section 5.4 hereof shall be true as of the date of Closing, and the Owner and the Developer shall have complied with all of the terms and conditions of this Agreement.

(b) The Owner and the Developer shall have delivered to the City and the Authority a certificate certifying that the conditions set forth in Section 4.2(a) have been satisfied.

(c) The City and the Authority shall have been provided with certified copies of resolutions of the Owner's and the Developer's Board of Directors authorizing the execution and performance of this Agreement.

(d) The Public Facilities Commission, the City Council and the Authority shall have adopted any votes necessary to authorize the transactions contemplated hereby.

(e) The MBTA shall have conveyed the Additional MBTA Property to the Owner pursuant to the terms of the MBTA Agreements.

(f) The Owner and the Developer shall have delivered to the City and the Authority copies of the MBTA Agreements, and the MBTA Agreements shall be in full force and effect.

(g) The Owner and the Developer shall have entered into the Development Impact Project Agreement, contemplated by the 121A Application in Exhibit E.

(h) The Owner and the Developer shall have executed a Boston Residents Construction Employment Plan, a Memorandum of Understanding setting forth an employment opportunity plan and a First Source Agreement.

§4.3. Closing.

(a) The closing (the "Closing") of the conveyances contemplated hereby shall occur on such

date (such date, as it may be extended pursuant to subsections 4.3(b) and (c) hereof, hereinafter the "Closing Date") at such time during normal business hours and such place in the City of Boston as the Owner may specify by not less than four days prior written notice to the City and the Authority given between the date hereof and January 27, 1993. If the conditions precedent to Closing set forth in Sections 4.1 and 4.2 hereof have been satisfied, then the Closing shall occur no later than January 31, 1993. If any condition precedent set forth in Sections 4.1 and 4.2 has not been satisfied on or before January 31, 1993, then subject to the cure obligations set forth in subsections 4.3(b) and (c) below, the party entitled to the benefit of such condition precedent may terminate this Agreement by written notice to the other parties. In the event that this Agreement is so terminated, all parties shall be relieved of any liability or further obligation hereunder.

(b) If any of the conditions precedent to the obligation of the City and the Authority to close as set forth in Section 4.2 hereof have not been satisfied on or before January 31, 1993, and the City and the Authority determine that they will not close due to such failure, the City and the Authority shall specify such failure by written notice to the Owner and the Developer delivered on or before January 31, 1993,

whereupon the Owner and the Developer may elect to make all reasonable efforts to cure such failure, and the Closing Date, at the election of the Owner and the Developer, shall be extended for such period of time as the Owner and the Developer require to effect such cure; provided, however, that if the Owner and the Developer elect to make all such reasonable efforts to cure such failure, in no event shall the Closing Date be extended beyond April 30, 1993.

(c) If any of the conditions precedent to the obligation of the Owner and the Developer to close as set forth in Section 4.1 hereof have not been satisfied on or before January 31, 1993, and the Owner and the Developer determine that they will not close due to such failure, the Owner and the Developer shall specify such failure by written notice to the City and the Authority delivered on or before January 31, 1993, whereupon the City and the Authority shall make all reasonable efforts to cure such failure, and the Closing Date shall be extended for such period of time as the City and the Authority require to effect such cure; provided, however, that in no event shall the Closing Date be extended beyond April 30, 1993, and further provided, however, solely with regard to the condition precedent set forth in Section 4.1(d) hereof neither the City nor the Authority shall be required to pay any costs or expenses relative to a cure of such

condition precedent.

(d) The cost of recording the Original Air Rights Deed, the Lowell Way Easement Deed, this Agreement and any other documents required to be recorded hereunder shall be borne by the Owner.

5. Closing Documents.

§5.1. City and Authority Closing Documents. At the Closing, in addition to any other documents specifically required to be delivered or acts required to be done pursuant to this Agreement, the City and the Authority, as appropriate, shall deliver or cause to be delivered to the Owner, the following documents:

- (a) The Original Air Rights Deed;
- (b) The Lowell Way Easement Deed;
- (c) An affidavit in form reasonably acceptable to the Owner stating that there are no unpaid bills for labor, materials or services to the City Property; that no such services have been performed to any portion of the City Property within a period of ninety (90) days prior to the Closing the cost of which remains unpaid; and that the City is in sole and exclusive possession of the City Property and that no other person or entity has any right or claim to possession thereof; and
- (d) Such other documents as may reasonably be necessary or appropriate to carry out the provisions hereof, including without limitation such other affidavits or certifications as may reasonably be

required to induce the Owner's title insurance company to issue to the Owner the title insurance referenced in Sections 4.1(d) above including, without limitation the certificate referenced in Section 5.3(b) below, provided, that neither the City nor the Authority shall be required to pay any costs or expenses to the Owner's title insurance company in connection therewith.

§5.2. Owner and Developer Closing Documents. At the Closing, in addition to any other documents specifically required to be delivered or acts required to be done pursuant to this Agreement, the Owner or the Developer, as appropriate, shall deliver or cause to be delivered to the City and the Authority, as appropriate, the following documents: the City Note and the City Mortgage.

§5.3. Representations, Warranties and Covenants of the City and the Authority.

(a) The City and the Authority agree to cooperate and assist the Owner and the Developer in obtaining all federal, state, county and local approvals that are necessary for development and construction of the Project.

(b) The City shall deliver a certificate or other evidence addressed and reasonably acceptable to the Owner, the Developer and the Owner's title insurance company, confirming compliance by the City with the requirements of Massachusetts G.L. Ch. 30B, to the extent applicable, with respect to the sale of the

City Property.

(c) The City and the Authority have full power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby, including without limitation, the execution, delivery and performance of each of the documents required to be delivered by each of them to the Owner and the Developer pursuant to this Agreement, and any and all other documents or instruments necessary or desirable to the consummation thereof.

(d) The City is indefeasibly seized of, and has good, clear, record and marketable title to the Original Air Rights in fee simple absolute, subject only to the Permitted City Exceptions, and the City has full power and authority to grant the Original Air Rights to the Owner. There are no rights of first refusal, purchase options or other forms of option as to the Original Air Rights.

(e) The Authority is indefeasibly seized of, and has good, clear, record and marketable title to Lowell Way in fee simple absolute, subject only to the Permitted Authority Exceptions, and the Authority has the full power and authority to grant the Lowell Way Easement to the Owner.

(f) This Agreement has been, and the Original Air Rights Deed and the Lowell Way Easement Deed and all other documents, instruments and agreements

required to be delivered by the City and the Authority, respectively, pursuant to or in connection with this Agreement will be, when executed and delivered, duly executed and delivered by the City and the Authority, respectively, and constitute legal, valid and binding obligations of the City and the Authority, respectively, enforceable in accordance with their respective terms, subject only to bankruptcy, insolvency or similar laws affecting enforcement of creditors' rights generally. The consummation by the City and the Authority of the sale of the City Property is not in violation of or in conflict with, nor does it constitute a default under, any term or provision of any agreement or instrument to which the City or the Authority is a party, or by which either of them is bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

(g) There are no pending or threatened judicial, municipal, administrative or other legal proceedings by any party, consent decrees or judgments with respect to, or in any manner affecting the City Property or any portion thereof, or in which the City or the Authority is a party by reason of the City's and the Authority's ownership of the City Property or any

portions thereof. The City and the Authority are not subject to any suit or administrative, arbitration or other proceeding or any judgment, decree or order entered in any suit or proceeding brought by any governmental agency or other person enjoining or otherwise restraining or restricting the City or the Authority with respect to the transfer and conveyance of the City Property and, to the best of the City and the Authority's knowledge and belief, no such suit or proceeding is threatened against the City, the Authority, or the City Property.

(h) The City and the Authority have not received any notice or notices, either orally or in writing, and are not aware of any change contemplated in any applicable laws, ordinances or restrictions, or any judicial or administrative action, or any action by adjacent land owners, which would prevent, limit or in any manner interfere with the use of the City Property including, without limitation, for the construction and operation of the New Garden and Tower A; nor is the City or the Authority aware of any proposed (i) special assessment to be levied against, or (ii) with the exception of the proposed relocation of Nashua Street and any relocation which may result from the Central Artery project (neither of which will result in any encroachment or loss of access to a public roadway), relocation of public roadways adjoining, the City

Property.

(i) The City has not stored, maintained, generated, disposed of or released any Hazardous Substance on, within or under any portion of the land over which the Original Air Rights are located, except in accordance with applicable law.

(j) The Authority has not stored, maintained, generated, disposed of or released any Hazardous Substance on, within or under Lowell Way, except in accordance with applicable law.

(k) All representations and warranties of the City and the Authority hereunder shall survive the Closing indefinitely. The City and the Authority hereby agree, subject to the limitations set forth in Section 10.8 hereunder, to hold the Developer and the Owner, and their respective shareholders, directors, employees, Affiliates, agents, Permitted Mortgagees and their respective successors and assigns harmless from any cost, loss, damage, expense or civil or criminal penalty of any nature whatsoever suffered by any of them as the result of any breach by the City or the Authority of the foregoing representations and warranties.

§5.4. Representations and Warranties of the Owner and the Developer. The Owner and the Developer hereby make the following representations and warranties, which representations and warranties shall be deemed to have been

given only on the date hereof and on the Closing Date.

(a) The Owner is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts, and the Developer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and is duly qualified to do business in the Commonwealth of Massachusetts. The Owner and the Developer each have all requisite power and authority to own property and assets and to carry on their respective businesses as now being conducted. The Owner and the Developer each have full power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby, including, without limitation, the execution, delivery and performance of each of the documents required to be delivered by the Owner and the Developer to the City or the Authority pursuant to this Agreement, and any and all other documents or instruments necessary or desirable to the consummation hereof.

(b) This Agreement has been, and the documents, instruments and agreements required to be delivered by the Owner and the Developer, respectively, pursuant to or in connection with this Agreement, will be when executed and delivered, duly executed and delivered by the Owner or the Developer, respectively,

and constitute legal, valid and binding obligations of the Owner or the Developer, respectively, enforceable in accordance with their respective terms, subject only to bankruptcy, insolvency or similar laws affecting enforcement of creditors' rights generally. The consummation by the Owner of the acquisition of the City Property is not in violation of or in conflict with, nor does it constitute a default under, any term or provision of the organizational documents of the Owner, or any of the terms of any agreement or instrument to which the Owner is a party, or by which the Owner is bound, or of any provision of any applicable law, ordinance, rule or regulation of any governmental authority or of any provision of any applicable order, judgment or decree of any court, arbitrator or governmental authority.

(c) There are no lawsuits or other legal actions pending against the Owner or the Developer, which if adversely decided, could have a materially adverse effect upon the ability of the Owner to acquire the City Property or of the Developer to construct the New Garden.

(d) The Owner and the Developer have not stored, maintained, generated, disposed of or released any Hazardous Substance on, within or under the Existing Garden Site, except in accordance with applicable law.

(e) The Owner and the Developer have or will obtain all permits from any City, State or Federal agency necessary for the construction and operation of the New Garden.

(f) All representations and warranties of the Owner and the Developer hereunder shall survive the Closing indefinitely. The Developer and the Owner hereby agree, subject to the limitations set forth in Section 8.7 hereof, to indemnify and hold the City and the Authority harmless from any damage suffered by the City and the Authority as a result of any breach by the Owner or the Developer of the foregoing representations and warranties.

6. Design and Construction of the Project.

§6.1. Plans and Specifications. The Developer shall complete the construction of the New Garden by September 1, 1997 substantially in accordance with the plans and specifications approved by the City in the 30B Process and by the Authority in its design review process and in the 121A Agreement (the "Plans and Specifications"), as such Plans and Specifications may be modified in compliance with the Authority's design review process and with the provisions of the 121A Agreement and in accordance with the New Boston Garden Corporation Adequacy Determination, issued by the Authority on September 28, 1992. Issuance of final design review approval by the BRA with respect to the Plans and Specifications shall constitute conclusive evidence of

the Authority's approval thereof for purposes of this Section 6.1. The design review process may incorporate and allow changes, from time to time, in the Plans and Specifications in order to reflect completion of the existing Plans and Specifications and to the extent reasonably desirable, or if necessitated by changes of conditions arising during the course of construction of the New Garden. Decisions made by the Authority in approving changes to the Plans and Specifications in connection with the design review process shall be conclusive.

§6.2. Force Majeure. The Owner and the Developer shall not be in default of their obligations to complete the construction of the New Garden by September 1, 1997 if such construction is delayed by reason of natural disasters, strikes, lockouts, refusal or inability to fund by their lenders (other than due to a default by the Owner or the Developer under any loan documents executed by the Owner or the Developer), governmental regulations or permitting procedures or by any other cause beyond their control.

7. Transfer and Mortgage of Interests.

§7.1. Interest in New Garden Site. Prior to the day (the "Completion Date") upon which a final certificate of occupancy (the "Final Certificate") is issued with respect to the New Garden, and except as provided in this Section 7.1 and Sections 7.2 and 7.3 below, and subject to any limitations set forth in the 121A Agreement or applicable hereto pursuant to Mass. G.L.c. 121A or Chapter 652 of the

Acts of 1960, no legal or beneficial interest in the New Garden Site shall be transferred by the Owner to anyone other than an Affiliate of the Owner without the prior written consent of the City and the Authority, which consent shall not unreasonably be withheld. For the purposes of the foregoing provision, a long term lease which would be considered a sale under generally accepted accounting principles would be considered a transfer of an interest in the New Garden Site. The City and the Authority hereby consent to the leasing of the New Garden Site by the Owner to the Developer under the terms of the Master Lease. The City's consent is not required for any leases other than leases which would be considered sales in accordance with the foregoing provisions.

§7.2. Liens and Encumbrances. Until the Completion Date, the Owner shall not allow any liens or encumbrances to exist against the City Property except the following:

- (a) Those liens and encumbrances existing on the date of Closing;
- (b) Any Permitted Mortgages;
- (c) To the extent contemplated by the MBTA Agreements, any liens held by the MBTA subordinate to the City Mortgage on the Existing Garden Site or on the Tower A Site, and any cross easements, utility easements and the like with the MBTA; and
- (d) Any other cross easements, access, utility and drainage easements and the like which are necessary

or desirable for the construction and operation of the New Garden or Tower A.

§7.3. Permitted Mortgages. Notwithstanding anything to the contrary contained in this Agreement, the following shall apply with respect to mortgages and other encumbrances of the City Property and such mortgages and other encumbrances as permitted in this Section 7.3 shall hereinafter be referred to as "Permitted Mortgages".

(a) Prior to the Completion Date, the Owner shall not mortgage, encumber or pledge its rights in the City Property without the prior written consent of the City and the Authority, which consent shall not unreasonably be withheld. The Authority and the City hereby consent to any mortgage, encumbrance or pledge of the City Property or any rights therein required by the Initial Financing. In addition, the Authority and the City hereby confirm that the Construction Lenders are Permitted Mortgagees for purposes of this Agreement, and shall be entitled to the benefits set forth in Section 8 hereof.

(b) Following the Completion Date, subject to the Owner's obligation, if any, to pay all or any portion of the Purchase Price at such time pursuant to the terms of the City Note and the City Mortgage, and the obligation of the Owner, if any, to pay a Contingent Fee at such time pursuant to Section 9 hereof, the Owner may finance, refinance, mortgage or

otherwise encumber the City Property at any time without the consent of the Authority or the City.

(c) No holder of any Permitted Mortgage shall have the rights and benefits set forth in Sections 8.6 and 8.7, nor shall any provisions of such Sections 8.6 and 8.7 be binding upon the City and the Authority with respect to any such Permitted Mortgage, unless or until such Permitted Mortgage is recorded in the Suffolk County Registry of Deeds. The Owner further agrees to provide a true copy of each Permitted Mortgage to the City and the Authority. Any Permitted Mortgagee (including a Permitted Mortgagee, or its designee, who obtains title to the New Garden Site or any portion thereof by foreclosure or deed in lieu, but not including a party who obtains title through such Permitted Mortgagee or any purchaser at a foreclosure sale other than the Permitted Mortgagee or its designee) shall not be obligated by this Agreement to construct or complete the New Garden or to guaranty any such construction or completion, but shall have the obligations described in Section 8.6(e).

8. Defaults and Remedies.

§8.1. Completion Default. If the Developer fails to complete the construction of the New Garden by September 1, 1997, or such later date as may result from any force majeure pursuant to Section 6.2 hereof, such failure to complete by such date shall constitute a "Completion

Default" hereunder. No other breach of any representation, warranty or covenant of the Owner or the Developer shall constitute a Completion Default.

§8.2. Other Defaults. If (a) the Owner transfers legal or beneficial ownership to the City Property in violation of Section 7.1; or (b) the Owner or the Developer is otherwise in material breach of their representations or covenants hereunder, such failure or breach shall constitute a "Default" hereunder.

§8.3. Completion Event of Default; Event of Default. Upon the occurrence of either a Completion Default or a Default, the City and the Authority may notify the Owner and the Developer in writing of such Completion Default or Default and if such Completion Default or Default is not cured within one hundred and twenty (120) days of receipt of such notice from the City and the Authority, or if such Completion Default or Default is not susceptible of cure within such one hundred and twenty (120) day period, if the Owner or the Developer, as appropriate, does not commence or cause the commencement of such cure within that one hundred and twenty (120) day period and diligently pursue completion of the same, then the City and the Authority may notify the Owner and the Developer that an event of default ("Event of Default"; or, as to a Completion Default, a "Completion Event of Default") has occurred hereunder.

§8.4. Remedy Upon Completion Event of Default. Upon written notice by the City and the Authority to the Owner

and the Developer that a Completion Event of Default has occurred the remedy of the City and the Authority shall be to order the Owner to convey the New Garden Site, the Lowell Way Easement and the same rights in Parcels A-3 and A-4 (as shown on the Subdivision Plan) as were conveyed to the Owner by the City in the Original Air Rights Deed (collectively, the "Reversion Property") to the City, unless the Owner or the Developer cures or causes the cure of such Completion Event of Default within one hundred and twenty (120) days of receipt of notice of that Completion Event of Default, or if such Completion Event of Default is not susceptible of cure in that one hundred and twenty (120) day period, unless the Owner or the Developer, as appropriate, commences or causes the commencement of such cure within that one hundred and twenty (120) day period and diligently pursues the completion of the same. If such cure or commencement of cure as discussed above does not occur, the Owner shall promptly transfer possession of, and convey to the City the Reversion Property in "as is" condition, and shall release the Lowell Way Easement. Upon such conveyance and release the City shall release the Existing Garden Site from the City Mortgage. If the Owner fails to so convey and release, the Authority and the City may institute such actions or proceedings as they may deem advisable to compel such conveyance and release, but for no other purpose, such conveyance and release being the sole and exclusive remedy of the City and the Authority upon a Completion Event of

Default. Upon conveyance of the Reversion Property, the Owner and the Developer shall have no further liability or obligations under this Agreement. Pursuant to Section 10.14 hereof, this Agreement is to be recorded subsequent to the MBTA Cooperation Agreement. Accordingly, upon the conveyance of the Reversion Property to the City by the Owner the City shall take title to the Reversion Property subject, inter alia, to the obligation of the Owner of the Additional MBTA Property to construct the New Boston Garden.

§8.5. Remedies Upon Event of Default. In the case of an Event of Default, (but not in the case of a Completion Event of Default) the City and the Authority shall have all available remedies at law or in equity unless the Owner or the Developer, as appropriate, cures or causes the cure of the Event of Default within thirty (30) days of receipt of notice of the Event of Default from City and the Authority, or, if such Event of Default is not susceptible of cure in said thirty (30) day period, unless the Owner or the Developer, as appropriate, commences or causes the commencement of such cure within that thirty (30) day period and diligently pursues completion of the same.

§8.6. Permitted Mortgagee Protections. If the City Property or any part thereof, or the interest of the Owner or Developer therein, is at any time or from time to time subject to one or more Permitted Mortgages and a copy of any such Permitted Mortgage (or any assignment thereof) is delivered to the City and the Authority then until such time

as the City and the Authority receive notice that such Permitted Mortgage has been satisfied, the following provisions shall apply:

(a) The City and the Authority, upon serving the Owner or the Developer with any notice of any Default, Completion Default, Completion Event of Default or Event of Default pursuant to this Agreement or any other material notice or demand under the provisions of or with respect to this Agreement, shall also serve a copy of such notice upon any such mortgagee under a Permitted Mortgage (herein a "Permitted Mortgagee"), and no notice or demand by the City or the Authority to the Owner or the Developer under this Agreement shall be deemed to have been duly given unless and until a copy thereof has been so served upon each such Permitted Mortgagee. Copies of notices shall be served by the City or the Authority upon the Permitted Mortgagee in accordance with the notice provisions contained in Section 10.6 hereof.

(b) If the Developer or the Owner has received notice from the Authority of a Default, Completion Default, Completion Event of Default or Event of Default, or any other notice or demand under the provisions of this Agreement and such breach is not cured by the Developer or the Owner before the expiration of the period provided therefor, any Permitted Mortgagee may cure any such breach upon

giving written notice of its intention to do so to the Authority within ninety (90) days after such Permitted Mortgagee receives notice from the Authority of the Owner's or Developer's failure to cure such breach, and shall thereupon proceed with due diligence to cure such breach. If any Permitted Mortgagee so elects to cure any breach, a reasonable extension of time for performance will be granted by the Authority to enable the Permitted Mortgagee, and its transferee, to correct such breach.

(c) The City and the Authority shall not take any action to cause a reconveyance of the Reversion Property or to foreclose the City Mortgage, if within ninety (90) days after such Permitted Mortgagee receives notice of such Completion Event of Default the Permitted Mortgagee gives written notice of its intention to cure a Completion Event of Default and shall thereafter proceed promptly to cure such Completion Event of Default. The Permitted Mortgagee shall be deemed to be promptly proceeding to cure a Completion Event of Default if such Permitted Mortgagee shall have commenced foreclosure proceedings or other proceedings to acquire possession of the property subject to the Permitted Mortgage, provided that during the pendency of such proceedings the Permitted Mortgagee shall be proceeding with due diligence to complete such proceedings and shall thereafter proceed

promptly to cure such Completion Event of Default; provided, however, the Permitted Mortgagee shall not be obligated to continue such foreclosure proceedings if any such Completion Event of Default shall have been cured prior to the completion of such proceedings. A delay in any such proceedings caused by a filing under the Bankruptcy Code or any similar creditors' rights laws, shall not be deemed a failure by the Permitted Mortgagee to so proceed diligently.

(d) The Owner or the Developer may delegate irrevocably to any Permitted Mortgagee the authority to exercise any or all of the Owner's or the Developer's rights hereunder, but no such delegation shall be binding upon the City and the Authority unless and until the Owner, the Developer or such Permitted Mortgagee shall deliver to the City and the Authority a true copy of a written instrument effecting such delegation and the acceptance of such delegation by the Permitted Mortgagee. Such delegation of authority may be effected by the terms of the Permitted Mortgage itself, in which case the service upon the Authority of a copy of the Permitted Mortgage, together with a written notice specifying the provisions therein which delegate such authority to such Permitted Mortgagee, shall be sufficient to give the Authority and the City notice of such delegation. The City and the Authority shall be entitled to rely on any written instrument

effecting such delegation or on the provisions of the Permitted Mortgage.

(e) Prior to the Completion Date, if a Permitted Mortgagee or its designee, or a purchaser at a foreclosure sale, acquires title to the Reversion Property by foreclosure or deed in lieu of foreclosure, the Permitted Mortgagee or its designee, or such other purchaser, shall be required to elect and perform one of the following obligations:

(i) Complete construction of the New Garden in accordance with the Plans and Specifications and in all other respects comply with the provisions of this Agreement; or

(ii) Sell, assign, or transfer, with the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed), title to the Reversion Property to a purchaser, assignee or transferee who shall expressly assume all of the obligations of the Owner and the Developer under this Agreement by written instrument reasonably satisfactory to the City and the Authority and recorded forthwith in the Suffolk County Registry of Deeds; or

(iii) Convey fee simple title to the Reversion Property to the City, subject to all Permitted Mortgages and other encumbrances

permitted under this Agreement, in which event the provisions of Section 8.7 of this Agreement relative to resale shall apply.

In the event that a Permitted Mortgagee elects to complete construction pursuant to subsection (e)(i) above, or sells, assigns or transfers pursuant to subsection (e)(ii) above, the Authority shall extend the time limits set forth in Section 6 herein as shall be reasonably necessary to allow the completion of construction of the New Garden in accordance with this Agreement, and upon such completion, the Permitted Mortgagee or purchaser, as the case may be, shall be entitled to the Certificate of Completion pursuant to Section 8.9.

In no event shall any Permitted Mortgagee or its designee be liable for a Completion Event of Default or for other Events of Default under this Agreement prior to the time it acquires title or takes possession of the Reversion Property or after it shall sell, assign, transfer or convey title or possession thereof.

Notwithstanding the immediately preceding sentence, in no event shall any Permitted Mortgagee or its designee, or such purchaser, be subject to personal liability for any Completion Event of Default or other Events of Default under this Agreement while it owns or controls the Reversion Property, all such liabilities being hereby limited to the interest in the Reversion

Property of such Permitted Mortgagee or its designee, or such purchaser.

(f) Any holder of a mortgage may notify the Authority of its address and request that the provisions of Section 10.6 as they relate to notices apply to it, and that they be recognized as a Permitted Mortgagee hereunder. The Authority agrees to comply with any such request.

§8.7. Resale. If the Owner, a Permitted Mortgagee, its designee or a purchaser at foreclosure sale conveys the Reversion Property to the City pursuant to Section 8.6, the City shall release the Existing Garden Site from the City Mortgage (the "Revised City Mortgage"). The Authority on behalf of the City shall undertake promptly and with due diligence and in a commercially reasonable manner to resell the Reversion Property subject to the Revised City Mortgage. In preparation for resale, the Authority shall consult with and undertake the reasonable suggestions of the Owner, the Developer and the Permitted Mortgagee (or its designee or a purchaser from foreclosure). The Reversion Property shall be sold in "as is" condition and the Authority shall have no obligation to invest additional funds to expedite such sale. The proceeds of such sale, together with the net income, if any, derived by the Authority from the operation and management of the Reversion Property after conveyance to it, shall be used as follows:

(a) First, to pay all taxes, payments in lieu of taxes, public charges and other sums owing to the City or any other governmental authority with respect to the Reversion Property up to the time of such sale.

(b) Second, to payment of any Permitted Mortgages in their order of priority.

(c) Third, to payment of the City Note.

(d) Fourth, in their respective order of priority, to make all and whatever payments may be necessary to discharge any other encumbrances or liens on the Reversion Property.

(e) Fifth, to reimburse the City and the Authority for all out-of-pocket third-party expenses reasonably and proximately incurred by the City and the Authority, including, without limitation, legal, management, brokerage, and repair costs, in connection with the repossession, management, conservation, construction and conveyance of the Reversion Property.

(f) Sixth, to reimburse the Owner and the Developer for 100% of the Total Development Cost allocable to the Reversion Property, less any amounts included in the Owner's Investment which have been paid out to third parties under this Section 8.7.

(g) Seventh, to the payment to the City of any Shared Appreciation Fee for the Reversion Property under Section 9 hereof.

(h) Eighth, the balance, if any, shall be paid to the Owner.

The obligations of the City and Authority under this Section 8.7 shall survive termination of this Agreement.

§8.8. Right of First Offer. If after a reconveyance of the Reversion Property to the City pursuant hereto the City or its successors or assigns wishes to offer to sell, or intends to solicit an offer to purchase, the Reversion Property to any bona fide third party, the Owner or its designee first shall have a right of first offer (the "Right of First Offer") to purchase the Reversion Property from the City on such terms and conditions (the "New Terms") as the City shall determine. Such Right of First Offer may be exercised by the Owner or its designee within thirty (30) days following written notice from the City to the Owner that the City intends to sell the Reversion Property, such notice to specify the New Terms. If the Owner does not exercise such Right of First Offer within that thirty (30) day period, the City may sell the Reversion Property to a bona fide third-party purchaser on the New Terms. If the Owner exercises its Right of First Offer and the City does not elect to accept such offer, the City may sell the Reversion Property to a bona fide third-party purchaser only pursuant to a request for proposals on the New Terms in which the Owner is invited to participate and with respect to which the Owner's proposal is not accepted.

§8.9. Certificate of Completion and Release of Reversionary Interest. Within thirty (30) days following notice by the Owner to the City and the Authority of the issuance of the Final Certificate, the Authority shall execute and deliver a Certificate of Completion and Release of Reversionary Interest (the "Completion Certificate") to the Owner in a form acceptable to the Owner, binding upon the City and the Authority and recordable in the Registry of Deeds for Suffolk County, Commonwealth of Massachusetts. If the Authority refuses or fails to provide a Completion Certificate within that thirty (30) day period, the Authority shall nevertheless be deemed for all purposes to have issued the Completion Certificate. Such certification by the Authority shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Agreement with respect to the obligations of the Owner and the Developer to construct the New Garden.

§8.10. City and/or Authority Defaults. In the event that the City, the Authority or both fail to satisfy the covenants contained in Section 5.3 hereunder, or materially breach any other obligations or requirements of the City, the Authority or both hereunder after thirty (30) days' written notice from the Owner or the Developer, then the Owner, Developer, or both may, in addition to all other remedies available at law or in equity, bring an action to

compel specific performance of such failure or breach and to recover payment of all damages, reasonable costs and expenses incurred on account of such failure or breach.

9. Contingent Fee.

§9.1. Terms. As additional consideration for the conveyance of the City Property to the Owner, the Owner shall pay to the City a fee (the "Contingent Fee") equal to one and one-half percent (1.5%) of any Gross Sale Proceeds or Adjusted Gross Refinancing Proceeds.

(a) As used herein, the term "Gross Sale Proceeds" means the total gross proceeds of any sale or resale of the Original Air Rights (or any part thereof) by the Owner or its successors and assigns, except to an Affiliate of such party. As used herein a sale shall be deemed to include a long term lease of the Original Air Rights by the Owner or its successors and assigns, except to an Affiliate of such party, which under generally accepted accounting principles would be treated as a sale.

(b) As used herein, the term "Adjusted Gross Refinancing Proceeds" means the total gross proceeds of any financing by the Owner or its successors and assigns secured by the Original Air Rights (or any part thereof), less (i) as to the New Garden Site, \$120,000,000, as such amount may have been increased by the Construction Lenders from time to time to allow issuance of the Final Certificate, completion of all

punchlist items, completion of the construction of a temporary concourse for the MBTA as contemplated by the MBTA Agreements, demolition and asbestos abatement for the Existing Garden and landscaping of the Existing Garden Site upon demolition of the Existing Garden, all of which are required as part of the Owner's and Developer's obligations with respect to the Initial Financing, and as such amount may have been reduced by amortization in accordance with its terms (the "Contingent Fee Basis"), and (ii) as to the Tower A Site, the maximum amount outstanding at any time of any construction or permanent financing secured by the Tower A Site placed within five (5) years of the commencement of construction of Tower A.

(c) For any sale of the New Garden Site which includes property in addition to the Original Air Rights, the amount of the Contingent Fee attributable to such sale shall be determined by multiplying (i) the Gross Sale Proceeds by (ii) the product obtained by dividing the square footage of Parcels A-1 and A-2, as shown on the Subdivision Plan, by the square footage of all of the property included within such sale.

(d) For any sale of the Tower A Site which includes property in addition to the Original Air Rights, the amount of the Contingent Fee attributable to such sale shall be determined by multiplying (i) the Gross Sale Proceeds by (ii) the product obtained by

dividing the square footage of Parcels A-3 and A-4, as shown on the Subdivision Plan, by the square footage of all of the property included within such sale.

§9.2. Successors and Assigns. The obligation to pay the Contingent Fee shall run with the Original Air Rights and be binding upon the Owner and its successors and assigns. Notwithstanding the foregoing, the following events shall not be deemed a sale, resale or financing for purposes of Section 9.1 hereof: (i) a foreclosure or acceptance of a deed in lieu of foreclosure by any mortgagee or lienholder on the New Garden Site pursuant to which such mortgagee, lienholder (or the designee of any such mortgagee or lienholder) or any other third party takes title to all or any portion of the New Garden Site; (ii) a purchase money financing by a third-party purchaser which occurs simultaneous with the consummation of a sale of all or any portion of the Original Air Rights by the Owner or its successors and assigns to any such third-party purchaser, provided, however, that payment of the Contingent Fee for the sale to which such purchase money financing relates is made as contemplated hereunder.

10. Miscellaneous Provisions.

§10.1. Time. Time is of the essence in the performance of the respective obligations of the parties contained in this Agreement.

§10.2. Successors and Assigns. This Agreement and all of the terms and provisions hereof shall inure to the

benefit of and be binding upon the successors and assigns of the parties hereto. Neither the City nor the Authority, may assign this Agreement without the written consent of the Owner and the Developer. Neither the Owner nor the Developer may assign this Agreement except to Permitted Mortgagees or to an Affiliate without the written consent of the City and the Authority.

§10.3. Entire Agreement. This Agreement, together with the exhibits hereto, represents the entire agreement between the parties covering everything agreed upon or understood in this transaction. There are no oral promises, conditions, representations, understandings, interpretations or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties, except as may otherwise be provided herein. No change or addition is to be made to this Agreement except by a written agreement executed by the parties.

§10.4. Jurisdiction. This Agreement and the rights of the parties hereunder shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts.

10.5. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the City, the Authority, the Owner or the Developer of the breach of any covenant of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other covenant or condition of this Agreement.

§10.6. Notices. All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if (a) delivered personally, or (b) if deposited with an overnight delivery service, properly addressed and postage prepaid. All notices shall be effective upon receipt if delivered personally, and by 5:00 p.m. on the first business day following shipping if sent by overnight delivery service. Notices shall be addressed as follows:

(i) if to the City, to:

with a copy in like manner to:

(ii) if to the Authority, to:

Boston Redevelopment Authority
One City Hall Square
Boston, MA 02201
Attention: Director

with a copy in like manner to:

Boston Redevelopment Authority
One City Hall Square
Boston, MA 02201
Attention: Chief General Counsel

and (iii) if to the Owner or the Developer, to:

c/o Delaware North Companies Incorporated
One Delaware North Place
438 Main Street
Buffalo, NY 14202
Attn: Stanley R. Mills, Jr., Esq., General Counsel
and

New Boston Garden Corporation
150 Causeway Street
Boston, MA 02114
Attn: Walter C. Upton, Project Manager

with a copy in like manner to:

Stephen I. Burr, Esquire
Eckert Seamans Cherin & Mellott
One International Place - 18th Floor
Boston, MA 02110

or at any other address as may be given by any party to the other party by notice in writing pursuant to the provisions of this Section 10.6.

Notices and other communications to any Permitted Mortgagee hereunder shall be deemed given when deposited in the United States mail and sent registered or certified mail, postage prepaid, to such Permitted Mortgagee at the address set forth in its Permitted Mortgage, or to such other address as may be given by such Permitted Mortgagee to the Authority in writing pursuant to the provisions of this Section 10.6.

§10.7. City and Authority Staff and Officers Barred From Interest. No member, official or employee of the City or the Authority shall have any personal interest, direct or indirect, in this Agreement or the Owner or the Developer, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested.

§10.8. Limitation of Liability. Notwithstanding any provision of this Agreement to the contrary, no officer, director, employee, official, member or agent of any of the City, the Authority, the Owner or the Developer shall ever be held personally liable for the performance of any of the City's, the Authority's, the Owner's or the Developer's respective obligations hereunder. In addition, no assets of either the Owner or the Developer, or any Affiliate thereof, or any of their respective successors or assigns, other than the City Property and any improvements thereon, shall be available to satisfy any judgment against any of them with respect to any of their obligations hereunder, this Agreement and the City Note and the City Mortgage being nonrecourse obligations of the Owner and the Developer and their respective successors or assigns except to the extent of their equity in the City Property and any improvements thereon.

§10.9. Approvals. Where the provisions of this Agreement require notices, consents, approvals, authorizations, certifications, reviews and the like be given to the City (or any board, commission or agency thereof) or the Authority or received from the City or Authority hereunder, such provisions shall be deemed to provide that such notices, consents, approvals, authorizations, certifications, reviews and the like be given or received from the Authority, on its own behalf and acting as agent on behalf of the City.

§10.10. Severability. The provisions of this Agreement are severable, and if any such provision shall be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not be construed to affect the validity or constitutionality of any of the remaining provisions of this Agreement which shall remain in full force and effect.

§10.11. Headings. The descriptive headings of the articles and sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

§10.12. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

§10.13. Further Assurances. Whenever and so often as requested by a party hereto, the other party shall promptly execute and deliver or cause to be executed and delivered all such other and further instruments, documents or assurances, and promptly do or cause to be done all such other and further things as may be necessary and reasonably required in order to further and more fully vest in such party all rights, interest, powers, benefits, privileges and advantages conferred or intended to be conferred upon it by this Agreement.

§10.14. Construction. The parties acknowledge that each party and its counsel have reviewed and revised this

Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments, exhibits or schedules hereto.

§10.15. Exhibits. All the exhibits attached hereto are made a part of this Agreement and the terms thereof are incorporated into this Agreement by reference.

§10.16. Recording. This Agreement shall be recorded at the time of the Closing, such recording to be prior to the recording of any Permitted Mortgage, but subsequent to the recording of the MBTA Master Cooperation Agreement. The Original Air Rights Deed shall make reference to this Agreement and shall recite that it is subject to the terms hereof.

§10.17. Non-Discrimination. The Owner and the Developer agree that in the performance of their obligations hereunder they shall comply, and use reasonable efforts to require their contractors to comply, with all applicable laws, ordinances, regulations and orders from time to time in effect relating to non-discrimination, equal employment opportunity and affirmative action.

§10.18 City Agreements. The Owner and the Developer agree that they shall comply, and use good faith efforts to require their contractors to comply, with the Boston Residents Construction Employment Plan, the Memorandum of Understanding and the First Source Agreement, all entered

into pursuant to Section 4.2(h) hereof, which good faith efforts shall include efforts with a goal of employing workers in construction so that worker hours on a craft-by-craft basis be performed as follows: at least 50% by bona fide City of Boston residents, at least 25% by minorities and at least 10% by women, all in accordance with the terms of such agreements.

§10.19 Estoppel Certificates. Recognizing that the parties may find it necessary to establish to third parties the then current status of performance hereunder, either party, on the written request of the other made from time to time, will promptly furnish a written statement on the status of any matter pertaining to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date set forth above.

Approved as to form:

CITY OF BOSTON

Corporation Counsel

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: Mayor

BOSTON REDEVELOPMENT AUTHORITY

By: _____
Name: _____
Title: _____

GARDEN CORPORATION

By: _____
Name: _____
Title: _____

COMMONWEALTH OF MASSACHUSETTS
NEW BOSTON GARDEN CORPORATION

By: _____
Name: _____
Title: _____

That personally appeared _____
and acknowledged the foregoing instrument to be his free act and
deed of the above-named City of Boston before me, _____

Notary Public
My Comm. Expires _____

COMMONWEALTH OF MASSACHUSETTS

That personally appeared the above-named _____
and acknowledged the foregoing instrument to be his free act and
deed of the above-named Boston Redevelopment Authority before me,

Notary Public
My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

That personally appeared the above-named _____
and acknowledged the foregoing instrument to be his free act and
deed of the above-named Boston Redevelopment Authority before me,

Notary Public
My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 19__

Then personally appeared the above-named _____
and acknowledged the foregoing instrument to be the free act and
deed of the above-named City of Boston before me, _____.

Notary Public
My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 19__

Then personally appeared the above-named _____
and acknowledged the foregoing instrument to be the free act and
deed of the above-named Boston Redevelopment Authority before me,
_____.

Notary Public
My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 19__

Then personally appeared the above-named _____
and acknowledged the foregoing instrument to be the free act and
deed of the above-named Garden Corporation before me, _____.

Notary Public
My Commission Expires: _____

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

_____, 19__

Then personally appeared the above-named _____ and acknowledged the foregoing instrument to be the free act and deed of the above-named New Boston Garden Corporation before me, _____.

Notary Public

My Commission Expires: _____

1. "1974 Application" means the application submitted to the Authority pursuant to Mass. G.L. c. 12A referred to in the seventh recital of this Agreement.
2. "1974 Agreement" means the 1974 Application, the Report and Decision and the 1974 Amendment, all as referred to in the seventh recital of this Agreement.
3. "Individual 1974 Property" means the air rights over land owned by the 1974 owners to the Original Air Rights, located under parcels A-1, B-1, C-1, D-1, E-1, F-1, G-1, H-1, I-1 and J-1 as shown on the Subdivision Plan.
4. "Adjusted Gross Setbacked Volume" means gross volume from a floor area covered by the Original Air Rights calculated as set forth in Section 9.1(c) herein.
5. "Entity" means a corporation, partnership, trust or other entity or person controlling, controlled by or under common control with the referenced entity, including any such entity which is controlled by itself or by any children of Jersey Jacobs.
6. "Agreement" means this New Boston Garden Air and Conditioning Agreement.
7. "Authority" means the Boston Redevelopment Authority, a public body political and corporate organized under the laws of the Commonwealth of Massachusetts.
8. "City" means the City of Boston, a municipal corporation organized under the laws of the Commonwealth of Massachusetts.
9. "City Mortgage" means the mortgage, substantially in the form of Exhibit A attached hereto, to be granted by the Owner and the Developer to the City on the Existing Garden Site and the Tower A Site to secure the repayment of the City Note.

EXHIBIT A

Table of Definitions

1. **"6A Contract"** means the contract between the Owner and the City pursuant to Mass. G.L. c. 121A referred to in the seventh recital of this Agreement.
2. **"30 B Process"** means the process pursuant to which the Developer has been approved as the developer of the City Property by the City pursuant to Mass. G.L. c. 30B as described in the fifth recital of this Agreement.
3. **"121A Application"** means the application by the Owner to the Authority pursuant to Mass. G.L. c. 121A referred to in the seventh recital of this Agreement.
4. **"121A Agreement"** means the 121A Application, the Report and Decision and the 6A Contract, all as referred to in the seventh recital of this Agreement.
5. **"Additional MBTA Property"** means the air rights over land owned by the MBTA adjacent to the Original Air Rights, located above Parcels B-1, B-2, C-1, C-2, C-3, C-4, C-5, C-6, C-7 and C-8 as shown on the Subdivision Plan.
6. **"Adjusted Gross Refinancing Proceeds"** means gross proceeds from a financing secured by the Original Air Rights calculated as set forth in Section 9.1(c) hereof.
7. **"Affiliate"** means any corporation, partnership, trust or other entity or person controlling, controlled by or under common control with the referenced entity, including any such entity which is controlled by Jeremy Jacobs or any children of Jeremy Jacobs.
8. **"Agreement"** means this New Boston Garden Sale and Construction Agreement.
9. **"Authority"** means the Boston Redevelopment Authority, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts.
10. **"City"** means the City of Boston, a municipal corporation organized under the laws of the Commonwealth of Massachusetts.
11. **"City Mortgage"** means the mortgage, substantially in the form of Exhibit G attached hereto, to be granted by the Owner and the Developer to the City on the Existing Garden Site and the Tower A Site to secure the repayment of the City Note.

12. **"City Note"** means that certain Note from the Owner and the Developer in favor of the City in the original principal amount of \$20,150,000.00, to be executed substantially in the form of Exhibit F attached hereto.
13. **"City Property"** means the Original Air Rights and the Lowell Way Easement.
14. **"Closing"** means the consummation of the transactions contemplated hereby.
15. **"Closing Date"** means the date for the Closing specified in subsection 4.3(a) hereof, as such date for the Closing may be extended pursuant to the terms of this Agreement.
16. **"Commitment Letter"** means the commitment letter for the Initial Financing, as described in Section 4.1(h) of the Agreement.
17. **"Completion Certificate"** means the certificate of completion and release of reversionary interest given by the City and the Authority upon issuance of the Final Certificate of Occupancy pursuant to Section 8.9 hereof.
18. **"Completion Date"** means the day upon which the City issues the Final Certificate.
19. **"Completion Event of Default"** means a failure by the Developer to complete the construction of the New Garden by September 1, 1997, as such date may be delayed by force majeure pursuant to Section 6.2 hereof, all as set forth in Section 8.3 hereof.
20. **"Construction Lenders"** means Shawmut Bank, N.A., Fleet Bank of Massachusetts, N.A. and The First National Bank of Boston, and their successors and assigns.
21. **"Contingent Fee"** means the 1.5% fee payable by the Owner to the City in certain circumstances, all as set forth in Section 9 hereof.
22. **"Contingent Fee Basis"** means the amount described in Section 9.1(a) hereof.
23. **"Developer"** means New Boston Garden Corporation, a Delaware corporation.
24. **"Event of Default"** means an event of default other than a Completion Event of Default, as set forth in Section 8.3 hereof.

25. **"Existing Garden"** means all improvements presently located on the Existing Garden Site, as described in the first recital hereof.
26. **"Existing Garden Site"** means the land described as the Existing Garden Site in the First Recital hereof.
27. **"Final Certificate"** means the final certificate of occupancy issued by the City for the New Garden.
28. **"Gross Sale Proceeds"** means gross proceeds from a sale of the Original Air Rights or any portion thereof as set forth in Section 9.1(b) hereof.
29. **"Hazardous Substances"** means any and all elements, compounds, chemical mixtures, contaminants, pollutants, or other substances identified as "Hazardous Substances" under the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC 9601 et seq.; the Superfund Amendments and Reauthorization Act of 1986, 42 USCA; and all comparable statutes and regulations, whether federal, state or local, and any used or unused petroleum products.
30. **"Initial Financing"** means the original construction and term loan financing of the New Garden made by the Construction Lenders pursuant to the terms and conditions of the Commitment Letter, in the initial committed amount of \$120,000,000, as such amount may be increased from time by time by the Construction Lenders to allow completion of the Owner's and Developer's obligations with respect to the Initial Financing more particularly described in Section 9.1(b) hereof, together with any additional advances made by the Construction Lenders in accordance with the terms and conditions of the Commitment Letter to preserve and protect the collateral contemplated by the Commitment Letter.
31. **"Lowell Way"** means a certain right of way as described in the third recital of the Agreement.
32. **"Lowell Way Easement"** means the easement to be granted by the Authority to the Owner pursuant to the terms of the Lowell Way Easement Deed.
33. **"Lowell Way Easement Deed"** means the grant of the Lowell Way Easement from the Authority to the Owner delivered pursuant to Section 2.2 hereof.
34. **"Master Lease"** means that certain Lease Agreement by and between the Owner and the Developer described in the sixth recital hereof.

35. **"MBTA"** shall mean The Massachusetts Bay Transportation Authority, a public body politic and corporate and a political subdivision of the Commonwealth of Massachusetts.
36. **"MBTA Agreements"** means the MBTA Master Cooperation Agreement and any other agreements executed in connection therewith, including without limitation the Design and Construction Agreement and the Permanent Operating Agreement, by and among the Owner, the Developer and the MBTA.
37. **"MBTA Master Cooperation Agreement"** means the Agreement by and among the Developer, the Owner and the MBTA.
38. **"MOA"** means the Memorandum of Agreement between the City, the Authority and the Developer dated January 26, 1989, as amended by an Amendment No. 1, dated March 15, 1990.
39. **"New Building Site"** means the Original Air Rights together with the Additional MBTA Property.
40. **"New Garden"** means that certain mass transportation facility and sports and entertainment complex to be constructed by the Developer on the New Garden Site.
41. **"New Garden Site"** means the portion of the New Building Site described in the Sixth Recital hereof.
42. **"New Terms"** means the terms of an offer to purchase the Reversion Property given in the manner set forth in Section 8.8 of this Agreement.
43. **"Original Air Rights"** means the air rights described in the second recital hereof.
44. **"Original Air Rights Deed"** means the deed of the Original Air Rights from the City to the Owner delivered pursuant to Section 2.1 hereof.
45. **"Owner"** means Garden Corporation, a Massachusetts Corporation.
46. **"Permitted Authority Exceptions"** means those title exceptions as to the Lowell Way Easement specifically consented to by the Owner prior to the Closing.
47. **"Permitted City Exceptions"** means those title exceptions as to the Original Air Rights specifically consented to by the Owner prior to the Closing.
48. **"Permitted Mortgage"** means a mortgage on the City Property permitted under Section 7.3 of this Agreement, a copy of which has been given to the City and the Authority.

49. **"Permitted Mortgagee"** means a bank, insurance company, credit company, pension fund or other institutional lender which is a mortgagee of a Permitted Mortgage as set forth in Section 8.6(a) of this Agreement.
50. **"Plans and Specifications"** means the plans and specifications for the construction of the New Garden approved by the Authority in its design review process and in the 121A Agreement, as such plans and specifications may be modified in compliance with the Authority's design review process and with the provisions of the 121A Agreement.
51. **"Purchase Price"** means the purchase price for the City Property set forth in Section 3.1 of this Agreement.
52. **"Report and Decision"** means the decision of the Authority with respect to the 121A Application.
53. **"Reversion Property"** means the New Garden Site and the same rights in Parcels A-3 and A-4 (as shown on the Subdivision Plan) as were conveyed to the Owner by the City in the Original Air Rights Deed, all as defined in Section 8.4 (a) hereof.
54. **"Revised City Mortgage"** means the City Mortgage after release of the Existing Garden Site pursuant to Section 8.7 hereof.
55. **"Right of First Offer"** means the right of first offer given in Section 8.8 of this Agreement.
56. **"Subdivision Plan"** means the "Subdivision Plan of Land in Boston, Mass." prepared for New Boston Garden Corporation by Vanasse Hangen Brustlin, Inc., as described in the First Recital hereof.
57. **"Tower A"** means the commercial office, hotel, retail or other mixed use building to be developed on the Tower A site.
58. **"Tower A Site"** means the portion of the New Building Site identified in the sixth recital hereof.
59. **"Transaction Costs"** means any and all verifiable third-party costs payable by the Owner or its successors and assigns in connection with any sale, financing or refinancing.

Exhibit C

MORTGAGE DEED

GARDEN CORPORATION, a corporation duly established under the laws of the Commonwealth of Massachusetts having its usual place of business at 150 Causeway Street, Boston, Suffolk County, Massachusetts ("GC"), hereby grants to the CITY OF BOSTON ("Mortgagee") to secure the payment of that certain Note (the "Note") of even date in the principal amount of Twenty Million One Hundred Fifty Thousand Dollars (\$20,150,000), the land in Suffolk County, Boston, Massachusetts described in Exhibit A attached hereto (the "Tower A Premises") and the NEW BOSTON GARDEN CORPORATION, a corporation duly established under the laws of the State of Delaware having its usual place of business at 150 Causeway Street, Boston, Suffolk County, Massachusetts ("NBGC") ("GC and "NBGC" hereinafter collectively referred to as the "Mortgagor") hereby grants to the Mortgagee, also to secure payment of the Note, the land in Suffolk County, Boston, Massachusetts described in Exhibit B hereto (the "Existing Garden Premises"), together with all improvements located thereon and appurtenant rights associated therewith (collectively, the "Mortgaged Premises").

This Mortgage is not granted with Mortgage Covenants and is not subject to the Statutory Condition. Mortgagor hereby covenants (1) that it will pay any amounts owing under the Note in accordance with the terms of the Note, and (2) that it will not (A) sell all or any portion of the Mortgaged Premises to any person other than

an Affiliate (as defined by reference in the Note) of the Mortgagor or (B) commence Permanent Construction (as defined in the Note) on all or any portion of the Mortgaged Premises, without (i) paying all amounts owing in respect of the Note, whereupon this Mortgage Deed shall be discharged by the Mortgagee, or (ii) obtaining the express written consent of the Mortgagee; provided, however, that upon a sale or commencement of Permanent Construction on less than all of the Mortgaged Premises, the Mortgagor shall be entitled to a release of this Mortgage as to such portion of the Mortgaged Premises upon making a partial prepayment of the Note in accordance with its terms.

This Mortgage shall be subject to the sole condition that if the Mortgagor breaches the foregoing covenants, the Mortgagee shall have the Statutory Power of Sale, but the Mortgagee shall not have the right to foreclose, including the Statutory Power of Sale, for any other reason, and, in accordance with the terms of the Note, the Mortgagee shall not have the right to foreclose due to Mortgagor's failure to pay any amount owing under the Note in accordance with the terms of the Note if at such time any amounts in respect of the Initial Financing (as defined by reference in the Note) remain outstanding.

A foreclosure or acceptance of a deed in lieu of foreclosure by any mortgagee or lienholder on the Mortgaged Premises (other than the City) pursuant to which such mortgagee, lienholder (or the designee of any such mortgagee or lienholder) or any other third party takes title to the Mortgaged Premises shall not be deemed a

sale by the Mortgagor, and therefore shall not be deemed to be in violation of the foregoing covenants and condition, but such successor in title shall take title subject to this Mortgage, and be bound by the foregoing covenants and condition.

Except during such times as a payment arising out of a sale of the Mortgaged Premises is then due and payable pursuant to the specific terms of the Note, and so long as there is any other mortgage on the Mortgaged Premises, from time to time (the "Other Mortgage"), the following provisions shall apply for the benefit of each such mortgagee ("Other Mortgagee").

Mortgagee shall not accept, directly or indirectly, any payment on account of the Note. Thus, for example, but in no way in limitation of the foregoing, payments of insurance proceeds or condemnation awards shall be paid first to the holders of any Other Mortgages. Furthermore, in the event of any Insolvency or Liquidation Proceeding (as hereinafter defined) all Other Mortgagees shall first be paid in full before the Mortgagee or any holder of the Note is entitled to receive any direct or indirect payment or distribution of any cash, properties, securities or other value on account of the Note or any other payment with respect thereto. Any Other Mortgagee shall be entitled to receive directly for application to the payment of its debt (to the extent necessary to pay in full all of its debt, whether or not due, including specifically, but without limitation, all interest after such Insolvency or Liquidation Proceeding is commenced) any and all payments and distributions of any kind or character, whether in

cash, property, securities or other value which may be payable or deliverable in respect of the Note in any such Insolvency or Liquidation Proceeding. Any such payment or distribution which is made in cash shall be made available to the Other Mortgagee for application to the payment of its debt. Any such payment or distribution which is not made in cash shall be delivered to the Other Mortgagee to be held as collateral security for the payment of its debt. In the event that Mortgagee shall have received any payment from or distribution of assets of the Mortgagor or any estate created by the commencement of any such Insolvency or Liquidation Proceeding, of any kind or character in respect of the Note, whether in cash, property, securities or other value before all other secured obligations, whether or not due and including specifically, but without limitation, all interest after the commencement of such Insolvency or Liquidation Proceeding, is paid in full, then in such event such payment or distribution shall be received and held in trust for and shall be paid over to the Other Mortgagee (to the extent necessary to pay in full all obligations to it).

So long as any obligation secured by any Other Mortgage is outstanding, payment on account of the Note may not be accelerated and Mortgagee shall not (i) initiate or join with another in any Insolvency or Liquidation Proceeding, (ii) exercise or enforce any remedy in respect of any default under the Note or any insolvency of the Borrower or (iii) otherwise take or permit to be taken any action prejudicial to or inconsistent with such Other Mortgagee's

position and right to payment and such Other Mortgagee shall be entitled to file, vote and prove all claims therefor and take such other action, in the name of Mortgagee, as the Other Mortgagee deems necessary or appropriate to effectuate the foregoing provisions.

For purposes hereof Insolvency or Liquidation Proceeding shall be defined as follows:

Insolvency or Liquidation Proceeding means (i) any insolvency or bankruptcy case or proceeding, or any receivership, liquidation, reorganization, readjustment, composition or other similar case or proceeding, relative to the Mortgagor or to its assets, (ii) any proceeding for the liquidation, dissolution, reorganization or winding up of the Mortgagor, whether voluntary or involuntary and whether or not involving insolvency or bankruptcy, or (iii) any general assignment by the Mortgagor for the benefit of creditors or any other distribution, division, marshalling or application of assets and liabilities of the Mortgagor to creditors, voluntary or involuntary and whether or not involving legal proceedings.

Mortgagor and Mortgagee further agree that neither the Note nor this Mortgage may be modified or amended in any fashion whatsoever without the prior written consent of any Other Mortgagee who holds a mortgage on the Mortgaged Property at the time of such amendment, whether such mortgage is prior to or subordinate to this Mortgage, Other Mortgagee's consent to be the sole discretion of such Other Mortgagee.

Anything contained in this Mortgage to the contrary notwithstanding, no recourse shall be had for the payment of any amounts provided for hereunder or for any claim based hereon or on the Note against the Mortgagor or any shareholder, director, officer, employee, representative, Affiliate, or any successor or assign thereof (including, without limitation, any mortgagee (or designee of any such mortgagee) which acquires title to the Mortgaged Premises by foreclosure or deed in lieu of foreclosure), the Mortgagee's recourse being expressly limited to the interest of the Mortgagor (or any such successor or assign) in the Mortgaged Premises. The Mortgagor is not intending to convey to the Mortgagee by virtue of this Mortgage sufficient interest in the Mortgaged Premises that, as between the Mortgagor and the Mortgagee, the Mortgagee is assuming any responsibility for the removal or remediation of any hazardous substance from the Mortgaged Premises.

IN WITNESS WHEREOF the said GARDEN CORPORATION and NEW BOSTON GARDEN CORPORATION have caused their corporate seals to be hereto affixed and these presents to be signed, acknowledged and delivered in their name and behalf as of this ____ day of _____, 1992.

GARDEN CORPORATION

By: _____
Title: _____

NEW BOSTON GARDEN CORPORATION

By: _____
Title: _____

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 19__

Then personally appeared the above-named _____,
and acknowledged the foregoing instrument to be the free act and
deed of the above named Garden Corporation before me, _____.

Notary Public
My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

_____, ss. _____, 19__

Then personally appeared the above-named _____,
and acknowledged the foregoing instrument to be the free act and
deed of the above named New Boston Garden Corporation before me,
_____.

Notary Public
My Commission Expires:

EXHIBIT A

[Tower A Site Description]

[Lots A-3, A-4, C-1, C-2, C-3]

Exhibit B

NOTE

\$20,150,000.00

_____, 1992
Boston, Massachusetts

FOR VALUE RECEIVED, the undersigned, GARDEN CORPORATION and NEW BOSTON GARDEN CORPORATION, jointly and severally (the "Borrower"), promise to pay to the CITY OF BOSTON (the "City") at City Hall, Boston, Massachusetts, or at such other place as the City may from time to time designate in writing, the principal sum of Twenty Million One Hundred Fifty Thousand Dollars (\$20,150,000.00), in lawful money of the United States of America, together with zero percent (0%) interest thereon per annum.

This Note is granted by the Borrower pursuant to that certain Sale and Construction Agreement (the "Sale and Construction Agreement") of even date between the Borrower and the City, and is secured by the certain Mortgage (the "Mortgage") from the Borrower to the City of even date, granting to the City a mortgage in the Tower A Premises and the Existing Garden Premises (as defined in the Mortgage). Capitalized terms used herein without definition shall have the meanings set forth in the Sale and Construction Agreement or the Mortgage.

The maturity date of this Note (the "Maturity Date") shall be January 1, 2013, subject to certain prepayment rights and obligations as set forth in the succeeding paragraphs hereof.

If the Note has not been paid in full on or before January 1, 2008 (the "Payment Commencement Date"), then commencing on April 1, 2008 and on the first day of each succeeding calendar quarter the Borrower shall make a quarterly installment payment of principal calculated as the remaining unpaid principal balance of this Note as of the Payment Commencement Date divided by twenty (20), provided that such installments shall each be reduced by the amount of any subsequent prepayment pursuant to the terms of this Note, divided by the number of remaining installments. If the Borrower fails to make any such payment on the date such payment is due, and such failure is not cured within fifteen days of such due date, then in addition to the payment then due the Borrower shall pay a one-time late charge equal to three percent (3%) of the amount of such payment, provided, however, that if at such time the Borrower is excused from making such payment pursuant to succeeding provisions of this Note because any amounts owing in respect of the Initial Financing remain outstanding, no such late charge will be payable hereunder. In the event of any default hereunder, there shall be added to any unpaid balance any costs of collection incurred by the City, including reasonable attorneys' fees.

Exhibit B

NOTE

\$20,150,000.00

_____, 1992
Boston, Massachusetts

FOR VALUE RECEIVED, the undersigned, GARDEN CORPORATION and NEW BOSTON GARDEN CORPORATION, jointly and severally (the "Borrower"), promise to pay to the CITY OF BOSTON (the "City") at City Hall, Boston, Massachusetts, or at such other place as the City may from time to time designate in writing, the principal sum of Twenty Million One Hundred Fifty Thousand Dollars (\$20,150,000.00), in lawful money of the United States of America, together with zero percent (0%) interest thereon per annum.

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Exhibit B

NOTE

\$20,150,000.00

_____, 1992
Boston, Massachusetts

FOR VALUE RECEIVED, the undersigned, GARDEN CORPORATION and NEW BOSTON GARDEN CORPORATION, jointly and severally (the "Borrower"), promise to pay to the CITY OF BOSTON (the "City") at City Hall, Boston, Massachusetts, or at such other place as the City may from time to time designate in writing, the principal sum of Twenty Million One Hundred Fifty Thousand Dollars (\$20,150,000.00), in lawful money of the United States of America, together with zero percent (0%) interest thereon per annum.

This Note is granted by the Borrower pursuant to that certain Sale and Construction Agreement (the "Sale and Construction Agreement") of even date between the Borrower and the City, and is secured by the certain Mortgage (the "Mortgage") from the Borrower to the City of even date, granting to the City a mortgage in the Tower A Premises and the Existing Garden Premises (as defined in the Mortgage). Capitalized terms used herein without definition shall have the meanings set forth in the Sale and Construction Agreement or the Mortgage.

The maturity date of this Note (the "Maturity Date") shall be January 1, 2013, subject to certain prepayment rights and obligations as set forth in the succeeding paragraphs hereof.

If the Note has not been paid in full on or before January 1, 2008 (the "Payment Commencement Date"), then commencing on April 1, 2008 and on the first day of each succeeding calendar quarter the Borrower shall make a quarterly installment payment of principal calculated as the remaining unpaid principal balance of this Note as of the Payment Commencement Date divided by twenty (20), provided that such installments shall each be reduced by the amount of any subsequent prepayment pursuant to the terms of this Note, divided by the number of remaining installments. If the Borrower fails to make any such payment on the date such payment is due, and such failure is not cured within fifteen days of such due date, then in addition to the payment then due the Borrower shall pay a one-time late charge equal to three percent (3%) of the amount of such payment, provided, however, that if at such time the Borrower is excused from making such payment pursuant to succeeding provisions of this Note because any amounts owing in respect of the Initial Financing remain outstanding, no such late charge will be payable hereunder. In the event of any default hereunder, there shall be added to any unpaid balance any costs of collection incurred by the City, including reasonable attorneys' fees.

MEMORANDUM

DECEMBER 22, 1992

TO: BOSTON REDEVELOPMENT AUTHORITY AND
PAUL L. BARRETT, DIRECTOR

FROM: ERIC SCHMIDT, DIRECTOR OF URBAN DESIGN, DEPARTMENT OF
URBAN DESIGN AND DOWNTOWN PLANNING
BRIAN DE LOREY, ASSISTANT DIRECTOR FOR
ECONOMIC DEVELOPMENT
JUAN CARLOS LOVELUCK, PROJECT MANAGER, ECONOMIC
DEVELOPMENT DEPARTMENT

SUBJECT: NEW BOSTON GARDEN ARENA

SUMMARY: This memorandum requests that the BRA authorize the Director to execute a Sale and Construction Agreement with the Public Facilities Commission, the Garden Corporation, and the New Boston Garden Corporation for the disposition of City-owned property required for the construction of the new Boston Garden project and further that it grant an easement along Lowell Way to the Garden Corporation for arena-related purposes.

Introduction

The Boston Redevelopment Authority (BRA) has for the past seven years worked cooperatively with the Public Facilities Department (PFD) and the Mayor's Office to cause the development of a new Boston Garden sports arena and transportation center at North Station. On January 26, 1989, PFD tentatively designated the New Boston Garden Corporation (NBGC) to develop the City-owned property located behind the existing Boston Garden for that purpose. On the same date, the BRA voted to act as development agent for the City with respect to the redevelopment of North Station. On November 12, 1992, PFD amended the 1989 vote to replace NBGC with Garden Corporation (GC), an affiliate of NBGC, as the designated entity, and to reaffirm the tentative designation. Most recently, on October 22, 1992, the BRA approved the Chapter 121A application of the GC to develop, together with NBGC, a new Boston Garden sports arena at this site. Both GC and NBGC are wholly owned subsidiaries of the Delaware North Corporation.

Sale and Construction Agreement

At this time the City seeks to convey air-rights required for the new Boston Garden arena to GC and NBGC in accordance with the Sale and Construction Agreement (Agreement) between the parties in substantially the same form as attached hereto. Among other things, the Agreement calls for consideration to the City of \$20,150,000 as well as an additional payment of 1.5 percent of the proceeds of any sale or any refinancing of the property (excluding the initial construction and permanent financing) as more particularly set forth in the Agreement.

Lowell Way Easement

As part of the design of the new arena, access doors are located on the western end of the south wall of the building which will open onto Lowell Way, a BRA-owned area. In addition, NBGC seeks to conduct ticket sales and other arena-related activities from the west side of the existing arena building, also accessed by Lowell Way. Therefore, GC seeks an easement from the BRA at this location for purposes reasonably related to the operation of the arena including but not limited to ingress and egress, the installation and maintenance of utilities, and the installation and maintenance of a wind screen.

As part of the negotiations between the BRA, the City, GC, and NBGC for the acquisition of the City-owned property required for this project, it was agreed that this easement, which is similar to one granted to NBGC at approximately the same location for the benefit of the existing Boston Garden, must be granted in order for the project to proceed. The proposed easement is attached in draft form, as is a partial plan depicting its location.

Conclusion

We therefore recommend that the BRA authorize the Director to execute the Sale and Construction Agreement for the new Boston Garden arena and further that it grant an easement to GC on Lowell Way. Appropriate votes follow.

VOTED: That the Director of the Boston Redevelopment Authority is authorized to execute a Sale and Construction Agreement with the City of Boston through its Public Facilities Commission, the Garden Corporation, and the New Boston Garden Corporation for the purchase of City-owned air-rights required for the construction of the new Boston Garden arena and related development all in accordance with the Chapter 121A application approved by the Boston Redevelopment Authority on October 22, 1992, said agreement to be substantially in accordance with the attached Sale and Construction Agreement and including such additional terms and conditions as the Director deems appropriate and in the best interest of the Boston Redevelopment Authority;

